



County of Los Angeles  
**INTERNAL SERVICES DEPARTMENT**

1100 North Eastern Avenue  
Los Angeles, California 90063

*"To enrich lives through effective and caring service"*

Telephone: (323) 267-2103  
FAX: (323) 264-7135

May 06, 2014

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

Dear Supervisors:

**Recommendation: Authorize the Auditor-Controller to place residential Property Assessed Clean Energy (PACE) assessments on County tax rolls and authorize the Internal Services Department and Treasurer Tax Collector to perform an evaluation of the steps needed to implement a residential PACE program, including the execution of a solicitation to select a PACE Program Administrator. (ALL DISTRICTS 3 VOTES)**

**SUBJECT**

Pursuant to AB 811 (2008), a city or county can designate an area where property owners can receive financing for energy efficiency upgrades and renewable energy installations on their private properties by entering into voluntary contractual assessments where the costs for the improvement are paid via their property tax bill.

The Auditor-Controller (A-C) and the Chief Executive Office (CEO), in accordance with AB 811, are requesting that your Board authorize the placement of the Western Riverside Council of Governments (WRCOG) Property Assessed Clean Energy (PACE) assessments on the County tax rolls for those cities within the County that have enrolled in the WRCOG Home Energy Renovation Opportunity (HERO) program. The A-C also requests that your Board authorize the A-C to negotiate a fee agreement with WRCOG to place the PACE assessments on the County tax rolls.

Internal Services Department (ISD) and Treasurer & Tax Collector (TTC) request that your Board delegate authority to the Directors of ISD and TTC to take the necessary steps to evaluate the implementation of the County's residential PACE program and to instruct the CEO, ISD, and TTC to return when completed to seek your Board's approval of a recommendation regarding the County's residential PACE program and to report any risks associated with such program.

**IT IS RECOMMENDED THAT THE BOARD:**

1. Authorize the A-C to place residential PACE assessments administered by WRCOG on the County tax rolls for cities within the County that have entered into a joint powers agreement with WRCOG, in compliance with all applicable law, to enroll in the WRCOG HERO residential PACE program.
2. Authorize the A-C to negotiate an agreement on the fees charged to place the PACE assessments on the County tax roll pursuant to Streets and Highways Code section 5898.20 (b) and any subsequent annual agreement thereafter.
3. Delegate authority to the Director of Internal Services Department (ISD) and the Treasurer & Tax Collector (TTC), or their designees, to take the necessary steps to evaluate the implementation of the County's residential PACE program, including but not limited to: solicit and negotiate the terms of an agreement with a prospective County Residential PACE program administrator and revise County PACE program legal documents as needed.
4. Instruct the Chief Executive Officer (CEO), ISD and TTC to return to your Board to seek approval of a recommendation regarding residential PACE and report on all potential risk factors, including any developments related to Federal Housing Financing Authority (FHFA) regulatory engagement in PACE developments.

**PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

**PACE Background**

After receipt of American Recovery and Reinvestment Act (ARRA) funds in 2009, the County developed a PACE program in 2010 to provide funding for residential properties to install energy and water efficiency improvements onto qualifying properties through voluntary property tax assessments. Under AB 811, signed into law in 2008, these voluntary assessments would stay with a property if it were sold. PACE was designed to overcome a significant obstacle in achieving greater residential participation in energy/water efficiency: lack of a standard financing product and homeowners' uncertainty about how long they would own their property.

The County's PACE program was designed to be eligible to property owners in all cities within the County and unincorporated areas. Cities became eligible for the County's program through a City Council resolution adopting the program rules and requirements. 80 cities have joined the County PACE program.

In July 2010, the Federal Housing Financing Authority (FHFA) issued a guidance memo to the Federal National Mortgage Association (FNMA or 'Fannie Mae') and the Federal Home Loan Mortgage Corporation (FHLMC or more commonly 'Freddie Mac'/FMAC) expressing concerns about energy programs like PACE that utilize property tax assessments, especially where the assessments retain priority status over mortgages in the event of default or foreclosure. These concerns were raised despite the fact that local governments have for decades utilized property tax assessments to fund local improvements. FHFA's guidance memo identified actions FNMA, FMAC and/or their lenders might undertake to protect their investments in residential mortgages, as described further below. A number of actions were initiated by local, state and federal stakeholders to mitigate the

risks posed by FHFA's statements including: continuation of existing residential PACE programs, lawsuits filed by PACE-supportive states (including California), proposed federal legislation, and other outreach at the federal Executive level.

As a result of the uncertainty around PACE and perceived risks to PACE jurisdictions and homeowners, the County delayed implementation of its residential PACE program and instead focused on developing and implementing a PACE program for non-residential properties. This commercial PACE program was implemented in 2011.

#### WRCOG HERO Assessments

In January 2012, the WRCOG in partnership with Renovate America and through Renovate America's HERO program, created its residential PACE program within Riverside County. Renovate America is a private company that offers its HERO program to jurisdictions interested in creating residential PACE programs. In late 2013, WRCOG approved expanding its HERO program to other jurisdictions throughout the State. Other cities and counties can join WRCOG HERO by similarly passing a governing body resolution adopting WRCOG HERO's program rules and requirements.

There are currently forty-one cities within the County that have opted to join the WRCOG HERO program. As part of that process, WRCOG has requested the County, through the A-C, to execute an agreement governing the placement of PACE assessments within 38 of the 41 cities, the collection of the assessments and transmittal of the assessments to WRCOG, and reimbursement to the County for expenses to administer the HERO assessments. Under AB 811, the County is authorized to place, collect and remit these assessments to the WRCOG.

Streets and Highways Code section 5898.30 provides that the PACE assessments are collected in the same manner and at the same time as the general taxes of the county on real property. In addition, Streets and Highways Code section 5898.20 (b) authorizes the A-C to negotiate a fee agreement with WRCOG for placing the PACE assessments on the County tax rolls.

Through this Board Letter, the CEO and A-C request approval by your Board to accept the placement of the PACE assessments on the County tax rolls for the cities in the County that have joined the WRCOG HERO program.

#### Status of Residential PACE in California

Much has occurred since PACE was authorized under AB 811; jurisdictions moved to create programs, and FHFA signaled its concerns and caused many programs, including the County's, to be placed on hold. However, a number of jurisdictions throughout the State have continued operation of their own residential PACE program or joined the WRCOG HERO program. The evaluation and assessment of the risks to the jurisdictions and property owners of the FHFA statements and potential actions by FNMA, FMAC and/or their lenders have been interpreted differently by individual jurisdictions. The actions suggested by FHFA as addressed to FNMA, FMAC and their lenders include:

- PACE violates mortgage contract and can be considered an act of default.
- Lenders may require larger down payments for all new mortgages issued in communities that offer PACE financing.

- Lenders may require mortgage holder consent prior to homeowners receiving PACE financing.
- Lenders may tighten underwriting requirements to make it harder for buyers to qualify for new mortgages in entire communities that offer PACE financing.

Program administrators and cities cite the information below in determining to move forward with either their own residential PACE programs or joining programs like WRCOG HERO:

- Program administrators will halt residential PACE programs upon any action taken by FHFA, FNMA, FMAC and/or their lenders.
- Jurisdictions have continued to offer residential PACE assessments and, to date, no action has been taken by FHFA, FNMA, FMAC or their lenders in legal or other proceedings.
- California's creation of a Residential PACE reserve fund (described further below) to protect FNMA and FMAC lenders against losses due to senior collection of assessments under foreclosure mitigates FHFA's primary concern that lenders will be negatively impacted by foreclosures involving residential PACE assessments having seniority over mortgages.
- FHFA, FNMA and FMAC do not directly regulate lending institutions that can determine on their own whether to implement any actions against properties with PACE assessments
- Statistics in residential PACE jurisdictions show that lenders are, for the most part, not requiring payoff of assessments upon refinancing or property sale.
- Recent statistics indicate that because PACE applicants must meet specified underwriting criteria, the risk of foreclosures on properties with PACE assessments is less than the foreclosure rates on properties without PACE assessments.
- Disclosure to homeowners of the actions that lenders may take against properties with PACE assessments, including the risk of foreclosure and the requirement to pay off the assessment upon sale of the property, which provides appropriate legal protection to the PACE jurisdiction. However, while homeowners in a PACE jurisdiction may still enter into an Installment Plan of Redemption to pay delinquent taxes pursuant to California Revenue and Taxation Code Section 4217, such action does not alleviate the risk of foreclosure under PACE.
- Neither FHFA, FNMA, FMAC nor any other stakeholder have intervened in any proceedings undertaken by jurisdictions to legally create PACE programs.

Residential PACE programs were created and continue to operate in Riverside County, San Bernardino County, Sonoma County, Placer County, City of Palm Desert and the City of Fresno. In the HERO programs in Riverside and San Bernardino, as of March of 2014 (in about 1.5 years of operation), over 11,000 projects have been completed or approved for funding. These projects represent over \$130 million in private investment. Sonoma County has funded about 2,000 residential projects totaling around \$30 million invested. Data from these jurisdictions and projects confirms many of the assumptions listed above and shows that residential PACE is clearly meeting a market demand for a financing product geared towards energy/water efficiency and renewable resources.

In March 2014, California began operating the PACE Reserve Fund under the California Alternative Energy and Transportation Financing Authority (CAEATFA), a division of the California Department of Finance. The Reserve Fund, established at \$25 million protects lenders from losses incurred due to collection of assessments prior to mortgage payments under foreclosure until the property is resold. The Reserve refunds lenders only the missed assessments, not the missed mortgage payments and not the entire assessment amount, while the property is under foreclosure. In creating the Reserve fund, Governor Brown announced "California is now prepared to eliminate any such risk by committing tens of millions of dollars to insure against PACE-related mortgage losses."

WRCOG HERO has enrolled cities in Los Angeles County, Orange County, San Diego County and many others including the City of San Jose. The California State Communities Development Authority (CSCDA) created a PACE program and also delayed its implementation due to FHFA's actions. However, in March 2014, CSCDA authorized the rollout of its residential PACE program later this year making PACE available to its 170 member cities and counties.

WRCOG HERO recently completed the nation's first public offering of residential PACE securities representing \$104 million in PACE assessments. The bond was rated AA by the Kroll Bond Rating Agency and was sold at a borrowing cost of 4.75%. The bond rating agency report provided a favorable assessment of the security while discounting the risk of potential FHFA intervention.

A detailed reporting of the status of residential PACE in California, including statistics on growing PACE participation, payment default rates, required assessment payoffs due to refinancing or property sales, the role of the PACE Reserve fund in California PACE programs, PACE financing rates and costs is provided in Attachment I, "Status of Residential PACE in California."

#### Recommended Action on the County's Residential PACE Program

Cities and counties, including cities within the County, are growing comfortable with the implementation of residential PACE in their jurisdictions. With the advent of the State Reserve fund, more data about residential PACE operations since the FHFA pronouncements, and with the growth of residential PACE throughout the State, it is timely to re-examine how to proceed with the County's residential PACE program. This section discusses how the County may proceed with implementing its residential PACE program, complete all technical and legal steps, and continue to gather information about the ongoing risks of residential PACE operations. These steps can be completed with no cost to the County except for labor costs within County Departments. ISD will require in its solicitation process that the selected administrator run the program with no financial contribution by the County. This is a program model that is prevalent in other PACE programs.

The steps required to implement the County PACE program are: solicit a prospective program administrator, negotiate the terms of an agreement with the prospective program administrator, and revise PACE program legal documents. At or near the conclusion of these steps, the CEO, ISD, and TTC will return to your Board with a recommendation on whether to proceed with rollout of the residential PACE program. It may be possible that multiple program administrators could be selected through this solicitation. This will be part of ISD and TTC's evaluation and ultimate recommendation.

The implementation and rollout of the County residential PACE program provides a more streamlined process for qualifying nearly all of the County's homeowners under a single program. As stated earlier, the County's PACE program has already enrolled 80 cities (including Los Angeles

and all large population cities). By rolling out the County program, nearly all qualified homeowners in the County will be immediately eligible for PACE assessments. The 38 cities that have joined WRCOG HERO will remain as eligible participants in a future County PACE program and will not preclude them from also maintaining their existing HERO program.

### **Implementation of Strategic Plan Goals**

These actions support Goal 1, Operational Effectiveness, by providing a program that promotes energy efficiency and conservation, and enhances health and sustainable practices in the County.

### **FISCAL IMPACT/FINANCING**

There is no known fiscal impact to the County by placing the WRCOG HERO assessments on the County's tax rolls and proceeding with the evaluation of a near-term implementation of the County residential PACE program. The County's costs to administer the WRCOG HERO assessments will be reimbursed under a fee agreement with WRCOG.

### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

Streets and Highways Code section 5898.20 (a)(1) and (2) authorizes a legislative body of any public agency (e.g., county and city) to designate an area which authorizes the public agency officials and property owners to enter into voluntary contractual assessments (i.e., PACE) to finance the installation of distributed generation renewable energy sources or energy or water efficiency improvements that are permanently fixed to real property.

Streets and Highways Code section 5898.20 (b) further provides that the legislative body must adopt a resolution that includes describing the proposed arrangements for financing the program, including a description of criteria for determining the creditworthiness of a property owner, and holding a public hearing. In addition, the resolution directs the public agency official to negotiate with the county Auditor-Controller in order to reach an agreement on what additional fees, if any, will be charged to the county for incorporating the PACE assessments. So far, 41 cities within the County have joined the WRCOG HERO program by adopting the appropriate resolutions.

### **CONTRACTING PROCESS**

A-C will negotiate and execute an agreement with WRCOG governing the placement, collection and remittance of WRCOG HERO residential PACE assessments and the reimbursement to the County for costs to manage the assessment program.

ISD will solicit and select a County residential PACE program administrator(s) and negotiate and prepare an agreement with the selected vendor(s) for execution subject to Board approval to proceed. The agreement shall not commit the County to rolling out the program and offering PACE assessments unless the Board authorizes this based on a PACE status report to be provided at an appropriate time. The agreement shall not require any funding from the County to the selected program administrator to proceed with steps to implement the County residential PACE program.

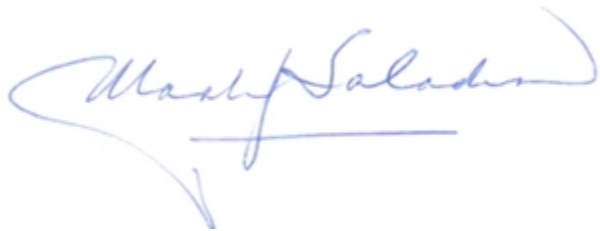
**IMPACT ON CURRENT SERVICES (OR PROJECTS)**

There is no impact on current County services or projects.

**CONCLUSION**

The Executive Office of the Board of Supervisors is requested to return one stamped copy of the approved Board letter to the Director of ISD.

Respectfully submitted,



MARK J. SALADINO  
Treasurer and Tax Collector



JOHN NAIMO  
Acting Auditor-Controller



JIM JONES  
Director

JJ/DC/HC:sg

Enclosures

c: Chief Executive Officer  
Executive Office, Board of Supervisors  
County Counsel

## **ATTACHMENT I – Residential PACE Information**

In 2008 the first PACE Pilot program was launched in California. By 2013, 31 states and D.C. had adopted PACE enabling legislation. Residential PACE Programs across the United States were created in response to several needs identified (within the various PACE bills) in the marketplace including:

- Significant long-term bill savings for home owners,
- Job creation in the face of recession and growth in its aftermath,
- An increase in overall economic activity, particularly in local regions participating in a PACE program,
- Expansion of statewide economic impacts and the likelihood that a growing market for energy efficiency and renewables could attract higher-value manufacturing and related job benefits to the state,
- Mitigate long-term regional greenhouse gas production through the reduction of energy usage from traditional utility sources and help the County and participating cities satisfy the State's greenhouse gas reduction goals under CA Assembly Bill 32.

Residential PACE programs have demonstrated economic and fiscal impacts and report on energy and GHG reduction. Actual data shows that homes with PACE assessments are less likely to default, and many studies have found that homes with energy upgrades sell at higher prices relative to those without. In fact, homes with solar photovoltaic systems and green labels, which may be funded entirely or partly through PACE, show an average increase in sales price of \$14,069<sup>1</sup> and \$34,800<sup>2</sup> respectively. Today, there are several PACE Programs offering residential financing including:

- **HERO PACE Program**, operated by Renovate America and offered across the state of California, currently active in Riverside County, San Bernardino County, Orange County, Kern County, Fresno County, and San Diego County. The HERO residential program has recently securitized \$104 million worth of residential PACE assessments. This is the first residential PACE securitization and is described later.
- **Sonoma County Energy Independence Program (SCEIP)**, administered by Sonoma County, CA, and is one of the oldest PACE programs in operation. SCEIP has completed over \$55 million in residential PACE financings.
- **mPower Placer**, operated by the County, Placer County, CA, with over \$6 million in residential PACE financings completed.
- **CaliforniaFIRST**, adopted in 167 cities and counties in California under the California State Communities Development Corporation (CSCDA). CSCDA has recently announced the launch of residential PACE this summer.
- **Ygrene**, operated by Ygrene Energy Fund, currently active in Sacramento, Palm Desert and Coachella Valley, CA and Miami-Dade County, Florida
- **Long Island Green Homes** - Babylon, NY
- **Set the PACE St. Louis**, launched summer 2013, operated by City of St. Louis, MO

In California, after analyzing data across 4 residential PACE programs (Sonoma County, Placer County, Palm Desert and HERO) the following aggregate milestones have been reached:

- 12,885 residential PACE assessments totaling \$261,742,222 have been placed.
- Over 6,000 jobs have been created (as reported by PACE administrators).

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<sup>1</sup> Data from "An Analysis of the Effects of Residential Photovoltaic Energy Systems on Home Sales Prices in California" by Ernest Orlando Lawrence Berkley National Laboratory in April 2011.

<sup>2</sup> Data from "The Value of Green Labels in the California Housing Market" by Nils Kok and Matthew Kahn In July 2012



- PACE Assessments have had 0 defaults but there have been late assessment payments (described below).
- Less than 1% of the assessments made have made late payments (a late payment can trigger a default/foreclosure process but the availability of PACE reserve funds, and the banks or the new property owner making the assessment payments current has mitigated this).
- Over 1,363 properties have refinanced or sold with 67% of those carrying the PACE lien through to the next property owner or lender.
- Only 1 of the 4 PACE residential programs (Placer County) halted and re-started their program as a result of the FHFA's guidance memo in July 2010.
- 22,314 residential PACE applications totaling \$447,149, 886 have been approved to date and are currently moving forward with implementation.

The table on the following page provides additional data about the operating residential PACE programs in California.

Residential PACE Program Data				
	<b>Sonoma County Energy Independence Program*</b>	<b>MPower Placer County**</b>	<b>Palm Desert ***</b>	<b>HERO****</b>
<b>Program Information</b>				
<b>Status</b>	Operating since 2009 No stop due to FHFA.	Re-opened July 9, 2013.	In operation from 2008-2013. The program funded over 350 energy projects for a total of \$6.5M. The City's program is no longer active. The City joined the regional PACE program developed by CVAG and administered by Ygrene using private funding.	Launched in 2011. No stop due to FHFA. 131 cities/ counties have signed up (41 in LAC). Recently securitized \$104m in PACE residential assessments.
<b>PACE Reserve Fund Participation</b>	Yes. Approved March 2014	Yes. For all new applicants.	Not available.	Yes. The reserve will not increase the fees paid by the customer
<b>Project Information/ Economic Impact</b>				
<b>Financed Projects (#)</b>	1,980	173	350	10,382
<b>Financed Projects (\$)</b>	\$55,497,552	\$5,812,808	\$6,500,000	\$193,931,862
<b>Energy Efficiency Projects (\$)</b>	\$13,807,676	Not available.	\$3,250,000	\$125,318,562
<b>Renewable Projects (\$)</b>	\$40,884,924	Not available.	\$3,250,000	\$68,613,300
<b>Average Project Cost</b>	\$28,000	\$29,300	\$20,000	\$18,679
<b>Jobs Created</b>	603	47	Not available.	2,378
<b>Energy Impact</b>				
<b>Est. Annual Savings per Home Owner (\$)</b>	\$1,575	Not available	Not available	\$2,167
<b>Lender Impact</b>				
<b>PACE defaults</b>	0	0	0	0
<b>PACE Late Payments</b>	0.42%	0.58%	0%	<1%
<b>Props Sold/Refinanced</b>	485	Not available	Nota available	878
<b>Props Sold/ Refinanced with lien carried</b>	161	Not available	Not available	756
<b>Interest Rate &amp; Fees</b>				
<b>Interest Rate</b>	7%	6%	7.64% - 8.59%	5.95%-8.95%
<b>Fees charged to Home Owners</b>	\$203 + .25% Reserve Fee + \$43 annual admin^	\$706 + .25% Reserve Fee + \$ annual administration^	Not available	6.95% Admin +\$95 Recording + \$35 annual administration*****

**\* Information from 2/25/2014**

**\*\* Information from 01/31/2014**

**\*\*\* Information from website and City of Palm Desert**

**\*\*\*\* Information from HERO 4/8/14**

**\*\*\*\*\* These fees vary on location and may be negotiated. They do not represent potential HERO program costs in LA County.**

**^ These jurisdictions use Treasury Pool and General Fund to finance projects.**

## **Typical Underwriting Criteria for Residential PACE Programs**

- Applicant(s) must be the owner(s) of record of the property.
- Mortgage-related debt on the property must not exceed 90% of the value of the property.
- Property owner(s) must be current on their property taxes for the prior twelve (12) months.
- Property owners must be current on all property debt of the subject property at the time of application and cannot have had more than one 30-day mortgage late payment over the previous 12 months.
- Property owner(s) have not declared bankruptcy in the past two (2) years and the property is not currently an asset in a bankruptcy proceeding.
- No involuntary liens greater than \$1,000.
- The amount to be financed under the Program may not exceed 10% of the value of the Property.
- The combined amount to be financed under the Program plus the mortgage related debt must not exceed 100% of the value of the Property.

## **FHFA Regulatory Timeline and Milestones**

**July 2008** – AB 811 signed into law by Governor Schwarzenegger

**2009-2010** – L.A. County receives ARRA funding (formula and competitive grants), initiates development of PACE program

**Mid 2010** – L.A. County PACE program design completed, judicial validation planned

**July 2010** - FHFA guidance letter

- PACE creates “safety and soundness concerns.” Authorizes actions may be undertaken to protect investments.
- PACE violates mortgage contract and can be considered an act of default.
- Require larger down payments for all new mortgages issued in communities that offer PACE financing.
- Require mortgage holder consent prior to homeowners receiving PACE financing.
- Tighten underwriting requirements to make it harder for buyers to qualify for new mortgages in entire communities that offer PACE financing.

**Late 2010** – County suspends Residential PACE program. Sonoma County, Placer County, Palm Desert continue residential PACE programs.

**Late 2010** – Initiation of Legal Action

- CA files lawsuit against FHFA (joined by Sonoma County, Palm Desert)
- 9th Circuit judge ruled that FHFA had violated the Administrative Procedures Act and required a public rulemaking process on PACE. FHFA appeals ruling; initiates rulemaking process. Thousands of comments received during rulemaking supporting PACE.
- In its Proposed Rule (6/15/12), FHFA said it would consider a PACE insurance or reserve fund as a “risk mitigation alternative.”
- The 9th Circuit Court of Appeals overturned the judge’s ruling (3/19/13) and said that FHFA had acted as a “conservator” and not as a “regulator” and dismissed the case.

**July 2011** - Bi-Partisan Legislation introduced in Congress. HR 2599 would have required FNMA and FMAC to allow PACE; and would have established national standards for PACE programs. HR 2599 receives broad and deep national bi-partisan political support. PACE support continues under HR 4285 introduced in March 2014.

**September 2011** – L.A. County Commercial PACE Program rolls out.

**November 2012** - Gov. Brown writes to President Obama to ask the President to direct FHFA to work with California on PACE insurance reserve.

**September 2013** – Governor Brown announces to FHFA that he will establish a PACE reserve, under the direction of California Alternative Energy and Advanced Transportation Financing Agency (CAEATFA) under the State Department of Finance. CAEATFA will develop regulations to run the program. FHFA is invited to comment. In the event of foreclosure, FNMA and FMAC will be able to recover outstanding PACE assessments.

**January 2014** - CAEATFA issues draft regulations governing the reserve, holds public workshop and takes comments. No comments submitted by FHFA, FNMA or FMAC.

**February/March 2014** - CAEATFA board unanimously voted to approve the PACE reserve; becomes operational in March.